for her to engage a servant, keep house and be able to save. In view of this, I am more inclined to accept her evidence that she was getting around $1,000 per month. Evidence of PW. 2 Kassim b. Abdullah who worked for deceased plaintiff showed that deceased's earnings would be more than the $800.00 as contended by defence. PW. 2's evidence on this has not been challenged or broken, on the contrary, his cross-examination has rather strengthened the plaintiff's contention. I am satisfied that PW. 1's evidence on the amount she used to receive from her late husband has not been disproved. In any case, I am also of the view that it is most unreasonable not to accept this figure in view of the style of living by plaintiff and his family and the type of business deceased was engaged in. After taking all these factors into consideration, I am of the view that in the circumstances a dependency of $500.00 is a fair and reasonable figure to arrive at. Although deceased was 61 years old, the photograph of his body showed that he was a robust 61 year-old and I believe he has to be especially in the kind of business he was engaged in when he had to travel almost daily to his work site. On this consideration I am of the view that a multiplier of 6 years is fair and reasonable.

In the event, I held the deceased defendant, the driver of car CB. 2486 to be 100% liable and gave judgment to the plaintiff. I awarded general damages in the sum of $36,000.00, special damages $945.00. As the accident occurred in May 1974 the money should have been paid long ago. In the event, I also awarded interest at 3% per annum on special damages from the date of accident to the date of judgment, 6% per annum on general damages from date of service of writ to the date of judgment and 6% per annum on general and special damages from date of judgment to the date of satisfaction.

Order accordingly.

Solicitors: *Mahindar Singh & Co.; Balendran, Chong & Bodi*

MISKINAH BTE. JAYA & ORS. v. MOHAMED BIN SALLEH & ANOR.

[O.C.J. (Shankar J.) August 16, 1983]
[Johore Bahru – Civil Suit No. 61 of 1979]

Road Traffic – Fatal accident – Duty of motorist when following another to take care of his own safety by not following too close.

Road Traffic – Fatal accident – Defendant unaware that there had been accident involving his bus – Inference of negligence by court.

The deceased, Abdul Talib, was riding a motorcycle along Jalan Rengam towards Kluang. He arrived at the junction of that road and a side road on his right leading to the new village of Sungei Sayong. His body was found lying across the centre of the road.

The defendant, the driver of the bus said that he did not know of any collision. He had heard nothing and had seen nothing. He had travelled from Sungei Sayong junction to Kluang, in blissful ignorance that anything was amiss. When told by the police there had been an accident involving his bus, he denied and refused to accept that the scratch marks found by the police had anything to do with any accident. Had there been one, the conductor and passengers would have alerted him but they did not.

The court found as a fact that the deceased did collide with the rear of the bus and that the force of the impact catapulted him into the air to the right.

Held: (1) the defendant's lack of knowledge of any accident must imply a finding that he was driving without due care and attention, and had not been keeping a proper look-out. On this count alone some negligence must be laid at his door;

(2) a motorist who is following another has a duty to take care of his own safety by not following too close. It behoves him to drive within the limits of his vision subject of course to the caveats placed on other motorists in front of him stopping abruptly on a main highway;

(3) the deceased and the defendant were equally to blame. The deceased should not have attempted to overtake when there was an oncoming lorry, or at the very least should have been able to pull up. The defendant who should have both the oncoming lorry in sight, and the motor cyclist in his rear view mirror, should have made appropriate allowances before slowing down, particularly as there was no compulsion for him to stop at the junction and not a little beyond.

(4) general damages was agreed at $24,200 and special damages at $800. Judgment for the plaintiffs was therefore for $12,500.

Per curiam: "The accident here occurred on April 16, 1978, nearly 5½ years ago. It makes life difficult for everyone if cases are not despatched with due expedition, not least for counsel who may no longer be able to trace witnesses and even when they find them, discover that they are left to make bricks without straw because their witnesses' memories have failed them".

Cases referred to:

(1) *ESSO Petroleum Co, Ltd.* v. *Southport Corporation* [1956] A.C. 218.
(2) *Haji Mohamed Dom* v. *Sakiman* [1956] M.L.J. 45.
(3) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220.
(4) *Haron* v. *Macaulay* [1969] 1 M.L.J. 169.
(5) *De Cotta* v. *Tan Hock Lee* [1972] 2 M.L.J. 173.
(6) *Chop Seng Heng* v. *Thevannasan & Ors.* [1975] 2 M.L.J. 3.
(7) *Qualcast (Wolverhampton) Ltd.* v. *Haynes* [1959] A.C. 743.
(8) *Chan Loo Khee* v. *Lai Siew San & Anor.* [1971] 1 M.L.J. 253.
(9) *Ratnasingam* v. *Kow Ah Dek* [1983] 2 M.L.J. 297, P.C.

CIVIL SUIT.

S.S. Gill for the plaintiffs.
V. Arunachalam for the defendants.

Cur. Adv. Vult.

Shankar J.: This case is yet another example of that old adage that "Accidents don't just happen. They are caused."

On April 16, 1978 Abdul Talib bin Abas, hereafter referred to as the deceased, was riding a motorcycle No. JT 719 along the Jalan Rengam road towards Kluang. At about 0930 hours he arrived at the junction of that road and a side road on his right leading to the new village of Sungei Sayong. As can be seen from the sketch plan, key and photographs, the Ketua Polis Balai Rengam later found the deceased's body lying across the centre of the road. He was quite dead.

Since the deceased is not here to speak for himself I felt obliged to consider the independent evidence in some depth, the more so as the eye witness accounts on either side created far more problems than they solved.

The road at the scene is quite straight for some distance in both directions from the accident spot – estimated by PW1 at about 200 metres one way and 300 the other, and at 300 feet on either side by the defendant. It was 21' 6" wide. Facing Kluang there was a junction on the right where a side road led to the New Village of Sg. Sayong. The last photograph seems to suggest that there was a dip in the road beyond the junction but the extent to which this feature may have masked an oncoming vehicle, is a matter for speculation. Although no evidence was led as to where or who took these pictures, it seems in order to infer that they were taken not too long after the accident since the body of the deceased and his machine are both shown, *in situ*, on the road.

Two other photographs of the rear of the bus JF 5870 are of greater interest. They purport to show a scratch mark on the rear off-side corner of the bus a few inches above the reflector. The defendant's evidence suggests that these two photographs were taken either at the police station or the R.I.M.V. Johor Baru where the bus was subsequently sent. The photographs were taken because they must have been thought to afford some evidence of the point of impact. But no witnesses were called to shed any light on the height of this mark from the ground, whether it would have matched some part of the motor-cycle (the left handle-bar perhaps), or whether there were any paint or rubber stains on either vehicle which could be traced to the other. It is to answer such questions, in addition to roadworthiness, that accident vehicles are sent to vehicle examiners at the R.I.M.V.

In the absence of other supporting material I would have had some difficulty in holding that the testimony produced in aid of the plaintiff's case had crossed the gap between evidence to proof. As will shortly be seen that critical distance here was more in the nature of a chasm. But, notwithstanding the denial by the defendant, (which I shall shortly deal with) a defence was filed admitting that a collision had taken place between the two vehicles.

It is trite law that parties are bound by their pleadings. *Esso Petroleum Co. Ltd.* v. *Southport Corporation*(1) came to Malaysia more than a quarter of a century ago, (see also *Haji Mohamed Dom* v. *Sakiman*(2)) and the doctrine of supremacy of pleadings still has us in thrall.

Any further analysis of the evidence can therefore only proceed forward on the basis that a collision did in fact take place between the deceased's motor-cycle and the defendant's bus. This taken together with the dead body and the machine on the road must lead to the inference that the collision was one direct cause of the death which followed.

The plaintiffs called only one witness – Encik Mayandi a/l Chelliah. His Police Report is in the Agreed Bundle at AB3. The salient features of this document are that he was driving his motor lorry JK 7423 that morning, with two others on board.

He approached the scene from Kluang. He saw a bus coming from the opposite direction. It was in the course of stopping to pick up passengers. At the same time he saw a motor cycle proceeding in the same direction as the bus. He then saw the motor-cycle colliding with the rear of the bus, and becoming airborne towards the right of the road. He heard the sound of an impact, "Pum", but was unable to say if it came from the bus or from his lorry. He stopped, alighted from his lorry and saw a male person straddled across the centre of the road.

His testimony in Court was quite at variance with this report. In his examination-in-chief he said he saw no passenger waiting for the bus. In cross-examination he was unable to explain this discrepancy. The only other points about his evidence I feel obliged to highlight is that at first sight the motor-cycle was 5 to 10 metres behind the bus and proceeding in the same direction. After the accident he stopped only about 100 metres beyond. He did not get down. Another motorist came up to him and accused him of knocking down the motor-cyclist. (As Mr. Arunachalam pointed out this is hearsay evidence but I did not agree that it was inadmissible. It is admissible to show it was made but not as proof of the truth of its contents: vide *Subramaniam* v. *Public Prosecutor*[3]). This motorist insisted that PW1 get down. But he did not, preferring instead to bolt off to the comparative safety of the Police Station with the motorist in hot pursuit. There was thus a second point on which credibility was in doubt i.e. whether he alighted from his vehicle.

On the other side of the scale, the defence called only one witness – the defendant himself Mohamed bin Salleh. I must say that I was impressed by his demeanour and carriage. He had that refreshing capacity for subjective truth which is still our good fortune to find amongst rural folk. His case was simplicity itself. He had about 20 passengers that day seated mostly near the exit door. Yes, he had slowed down at the Sg. Sayong junction but he did not stop because nobody asked him to and there were no passengers to be picked up. As to any suggestion of a collision the man was adamant. He did not know of any. He had heard nothing. He had seen nothing. He had blithely carried on from the Sg. Sayong junction to Kluang, in blissful ignorance that anything was amiss. There he deposited his passengers and returned to Rengam where the Sergeant was waiting for him at the bus station. He was told there had been an accident involving his bus, which he denied. At the Police Station he did not accept that the scratch marks found by the Sergeant had anything to do with any accident. He did not know of any accident. Had there been one, the conductor and passengers would have alerted him but they did not.

I have had no satisfactory explanation of how it came about that when the defendant denied a collision, his pleading admits it. Having expressed it as my opinion that the defendant struck me as a witness of truth, it is with some regret that I must find that his lack of knowledge of any accident must imply a finding that he was driving without due care and attention; and had not been keeping a proper look-out. On this count alone some negligence must be laid at his door.

As to Encik Mayandi I hold it as credible that the bus did slow down that day perhaps a little abruptly. I also hold as a fact that the deceased did collide with the rear of the bus and that the force of the impact catapulted him into the air to the right.

What cannot be predicated with any certainty is what happened after that and before the deceased's body came to rest. Whether he suffered a further impact with the oncoming lorry is very much on the cards.

Three cases were cited to me on the question of apportionment: *Haron* v. *Macaulay*[4]; *De Cotta* v. *Tan Hock Lee*[5]; and *Chop Seng Heng* v. *Thevannasan & Ors.*[6]

I invited the attention of Counsel to a fourth on the proper approach to the value of findings of fact in negligence cases as judicial precedent viz. *Qualcast (Wolverhampton) Ltd.* v. *Haynes*[7].

I agree with Mr. Arunachalam that a motorist who is following another has a duty to take care of his own safety by not following too close. It behoves him to drive within the limits of his vision subject of course to the caveats placed on other motorists in front of him stopping abruptly on a main highway: see *Chan Loo Khee* v. *Lai Siew San & Anor.*[8].

Taking all the circumstances into consideration I apportion liability in this case thus. I hold the deceased and the Defendant equally to blame. In a nutshell, the deceased should not have attempted

to overtake when there was an oncoming lorry, or at the very least should have been able to pull up. The defendant who should have had both the oncoming lorry in sight, and the motor cyclist in his rear view mirror, should have made appropriate allowances before slowing down, particularly as there was no compulsion for him to stop at the junction and not a little beyond.

In concluding my remarks on liability I would commend all concerned with running down actions to take serious note of the comments of Lord Scarman in *Ratnasingam* v. *Kow Ah Dek*[9].

The accident here occurred on April 16, 1978, nearly 5½ years ago. It makes life difficult for everyone if cases are not despatched with due expedition, not least for counsel who may no longer be able to trace witnesses and even when they find them, discover that they are left to make bricks without straw because their witnesses' memories have failed them.

Parties have agreed quantum at $24,200 for general damages and $800/– for special damages.

There will be judgment for the plaintiffs for $12,500/–. I also award interest thereon at 8% p.a. from February 28, 1979. The plaintiffs will also have the costs of the action.

Since there are minor beneficiaries involved I also direct that there be a separate application by plaintiff as to how this money should be distributed and that meanwhile the sum be held by plaintiff's solicitors upon Mr. Venga's undertaking that he will distribute the same as the Court orders.

Order accordingly.

Solicitors: *S.S. Gill & Co.; Venga & Co.*

V. GOVINDARAJ v. PRESIDENT, MALAYSIAN INDIAN CONGRESS & ANOR.

[O.C.J. (Zakaria Yatim J.) December 30, 1983]

[Kuala Lumpur – Suit No. A16 of 1983]

Administrative Law – Declaration – Internal discipline in political society – Suspension of member by President of political society – Appeal to Central Working Committee – President a member of the Central Working Committee hearing the appeal – Bias.

In this case the plaintiff applied for a declaration that the decision of the Central Working Committee of the Malaysian Indian Congress confirming the decision of the President of the Congress to suspend the plaintiff from membership of the Congress for a period of twelve months is null and void and contrary to the principles of natural justice. He also sought (a) a declaration that his suspension from the Congress is null and void being contrary to the principles of natural justice and (b) an injunction to restrain the first defendant and the M.I.C. from interfering in the plaintiff's continued membership. The plaintiff had been suspended by the President of the M.I.C. and he appealed to the Central Working Committee. At the meeting of the Central Working Committee which heard the appeal the President himself presided and took an active part in the proceedings.

Held: (1) the plaintiff had satisfied his contractual obligation under the M.I.C. Constitution and exhausted his domestic remedies and it was therefore proper for him to seek his remedy in the court;

(2) in this case the evidence clearly showed that there was not only real likelihood of bias but also actual bias in the part of the first defendant in dealing with the appeal of the plaintiff. The proceedings in respect of the appeal of the plaintiff in the Central Working Committee were therefore vitiated;

(3) there was no waiver by the plaintiff in this case, as he did not know of his right to object, although he was aware that the first defendant was biased against him;

(4) the court has no jurisdiction to declare that the suspension of the plaintiff by the first defendant was null and void. The court however has jurisdiction to declare that the hearing of the plaintiff's appeal by the Central Working Committee was null and void;

(5) it would not be proper for the court to grant an injunction as this would amount to interfering with the affairs of the M.I.C. without valid reason.

Cases referred to:

(1) *Datuk Pasamanickam* v. *Agnes Joseph* [1980] 2 M.L.J. 92.
(2) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63.
(3) *Maclean* v. *Workers' Union* [1929] 1 Ch. 602, 626.
(4) *R.* v. *Brewer, exparte Renzella* [1973] V.R. 375.
(5) *Queen* v. *Medical Board of South Australia, Exparte S.* [1976] S.A.S.R. 360.
(6) *Builders Registration Board of Queensland & Anor.* v. *Rauber* [1983] 57 A.L.J.R. 376, 377.